

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

and

STATE OF TEXAS,

Plaintiffs;

v.

ARKEMA, INC.,

Defendant.

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**COMPLAINT**

**INTRODUCTION**

1. Plaintiff State of Texas, on behalf of the Texas Commission on Environmental Quality ("TCEQ"), the Texas Parks and Wildlife Department ("TPWD") and Texas General Land Office ("GLO") (collectively, the "State"), and Plaintiff United States (through its Attorney General and on behalf of the federal natural resource trustee, the United States Department Interior (DOI)), bring this civil action to redress certain damages to natural resources for which Arkema, Inc. and its predecessors (Defendant) is liable.

2. For some decades Defendant and others conducted activities that resulted in the unauthorized disposal and release of hazardous substances (including arsenic) at and from the facility and operations located in the vicinity of 201 Dodge Street, Bryan, Brazos County, Texas ("Dodge Street Facility").

3. Releases and disposals of hazardous substances at and from the Dodge Street Facility injured and continue to injure natural resources within the trust responsibilities of the Plaintiffs.

4. Damages have resulted from the unauthorized disposal and release of hazardous substances, including arsenic, at and from Defendant's former Dodge Street Facility.

5. Plaintiffs seek from Defendant sums sufficient to cure, restore, and replace the injury and damage suffered by such natural resources, including the cost to restore, replace, or acquire equivalent natural resources, the value of lost services resulting from the injury to resources, and the reasonable cost of assessing and restoring injury to the natural resources and resulting damages.

#### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this matter under, among other provisions, Title 28 U.S.C. Section 1331 and 1345.

7. Defendant does business at the Dodge Street Facility, which is located in this judicial district.

8. This Court has personal jurisdiction over Defendant.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b) because the release or threatened release of hazardous substances that gives rise to the action occurred in this District.

**THE DODGE STREET FACILITY AND THE DEFENDANT**

10. Formulation of agricultural chemicals including herbicides, fungicides, and insecticides has been undertaken at the Dodge Street Facility.

11. Arsenic has been used as part of the manufacture of agricultural chemicals at the Dodge Street Facility, during operation of the Dodge Street Facility by Defendant and by others who operated Dodge Street Facility before Defendant did.

12. Other hazardous substances also found in elevated levels at or near the Dodge Street Facility include metals, insecticides, pesticides, and fungicides.

13. By 1994, Defendant ceased manufacturing activities at the Dodge Street Facility but continues undertaking various State-ordered, clean-up activities at the Dodge Street Facility including, among other things, the management of solid waste, and treatment of contaminated ground and storm water.

14. Defendant owned and operated the Dodge Street Facility at the time of unauthorized disposals and releases of hazardous substances and still owns the Dodge Street Facility.

15. Disposals and releases of hazardous substances related to Defendant's activities at the Dodge Street Facility resulted in disposals and releases of hazardous substances to the environment, including the disposal and release of arsenic to

groundwater, sediment and surface waters of Finfeather Lake, No Name Lake, Kazmeir Pond, the Connecting Channel, and Bryan Municipal Lake.

16. Investigation of areas at and near the Dodge Street Facility have identified disposals or releases of arsenic and other hazardous substances that have reached nearby groundwater and various water courses near the Dodge Street Facility. These investigations have identified injurious levels of arsenic in groundwater, seeps discharging to the surface waters, sediments immediately downstream of the Dodge Street Facility, and beyond -- extending downstream to the surface waters and sediments of Bryan Municipal Lake, Bryan, Texas.

17. On information and belief, Defendant's disposals or releases of hazardous substances damaged or destroyed various natural resources including but not limited to, groundwater; wading birds and waterfowl; wildlife such as turtles and amphibians; and aquatic organisms such as fish, crayfish, and macro-invertebrates.

#### **NATURAL RESOURCE TRUSTEES**

18. Under Section 107(f)(2)(A) of CERCLA, 42 U.S.C. § 9607(f)(2)(A), Plaintiff United States is a trustee for natural resources injured as a result of releases of hazardous substances from the Dodge Street Facility. Under Section 107(f)(2)(B) of CERCLA, 42 U.S.C. §9607(f)(2)(B), the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department and the Texas General Land Office are trustees for natural resources injured as a result of releases of hazardous substances from the Dodge Street facility.

19. The President has designated the Secretary of the Interior as the trustee for various natural resources, including those at issue here. *See* Exec. Order No. 12,580, as amended by Exec. Order No. 13,016, 61 Fed. Reg. 45871 (Aug. 28, 1996); 40 C.F.R. § 300.600(b)(2). Governors of the State of Texas have designated the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department and the Texas General Land Office as trustees for various natural resources including those at issue here.

20. The United States and the State of Texas have incurred unreimbursed costs in the assessment of natural resource damage related to the Dodge Street Facility.

**STATE LAW CLAIM BY STATE OF TEXAS**

(Texas Water Code; State Law Claim – Tex. Water Code §§ 26.261, *et seq.*)

21. Paragraphs 1 - 20 are re-alleged and incorporated herein by reference.

22. Defendant is a “responsible person” within the meaning of Tex. Water Code Section 26.263(6).

23. The Dodge Street Facility is a “facility” within the meaning of 30 Tex. Water Code Section 327.2.

24. Hazardous substances within the meaning of Tex. Water Code Section 26.263(4) were stored at or disposed of at the Dodge Street Facility.

25. There were “discharges or spills” within the meaning of Tex. Water Code Section 26.263(1) at or from the Dodge Street Facility.

26. Hazardous substances were discharged or spilled from the Dodge Street Facility into Finfeather Lake and then into Bryan Municipal Lake and nearby areas, where the hazardous substances caused injury to, destruction of, and loss of terrestrial

and aquatic resources held in trust or owned by Texas within the meaning of Tex. Water Code Section 26.265(d).

27. The State has incurred costs related to determining the impact of these discharges and spills on the environment and resources and will incur future costs to plan and implement the restoration of terrestrial and aquatic resources held in trust or owned by Texas, within the meaning of Tex. Water Code Section 26.265(d).

28. Pursuant to Tex. Water Code Section 26.265(d), Defendant is liable to the State for the costs of conducting reasonable and necessary scientific studies to determine the impacts of the spill on the environment and natural resources and to determine the manner in which to respond to the impacts of the discharges and spills, including the reasonable costs incurred in restoration of terrestrial and aquatic resources held in trust or owned by Texas.

**CERCLA CLAIMS BY THE UNITED STATES AND STATE OF TEXAS**

(Natural Resource Damages – 42 U.S.C. § 9607(a)(4)(C) and 42 U.S.C. § 9607(f))

29. Paragraphs 1 - 20 are re-alleged and incorporated herein by reference

30. Among their other effects, Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C) and Section 107(f) of CERCLA, 42 U.S.C. § 9607(f), make a person liable to the United States and to the State for natural resource damages (including costs of assessing the extent of damages) that result from release of hazardous substances from a facility that the person owned or operated, at the time of disposal or release of such substances from the facility, or that were released into the environment while the person owned the facility. In the words of the statute:

Notwithstanding any other provision or rule of law, and subject only to the

defenses set forth in subsection (b) of this section --

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . .
- (4) . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -
  - (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; . . .

42 U.S.C Section 9607(a);

In the case of an injury to, destruction of, or loss of natural resources [under Subsection (a)(4)(c)] . . . liability shall be to the United States Government and to any State for natural resources within the State or belong to, managed by, controlled by, or appertaining to such State. . . .

42 U.S.C. Section 9607(f)(1).

31. Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Defendant owned and operated the Dodge Street Facility within the meaning of Section 107(a)(1) & (2), 42 U.S.C. 9607(a)(1) & (2); Defendant still owns the Dodge Street Facility today.

32. The Dodge Street Facility is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

33. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) – including arsenic - were "released" from the Dodge Street Facility into the "environment" within the meaning of Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (8), including into Finfeather and Bryan Municipal Lakes and related waterways.

34. The disposal and release of hazardous substances from the Dodge Street Facility resulted in injury to, destruction of, and loss of natural resources, within the meaning of Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

35. The natural resources that have been injured, destroyed, or lost as a result of the release of hazardous substances from the Dodge Street Facility are "natural resources" as that term is defined in 42 U.S.C. § 9601(16), for which the United States or the State or both are trustees, and include, for example: fish, wading birds and waterfowl, wildlife such as turtles and amphibians, and aquatic organisms.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request:

- a. Judgments against Defendant for all sums to cure, restore, and replace the injury and damage suffered by such natural resources, including the cost to restore, replace, rehabilitate, and/or acquire equivalent natural resources, the value of lost services resulting from the injury to resources, and the reasonable cost of assessing injury to the natural resources and resulting damages, as well as interest, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(4)(C) and Section 107(f) of CERCLA, 42 U.S.C. § 9607(f);
- b. Judgments against Defendant for the costs of conducting reasonable and necessary scientific studies to determine the impacts of spills and discharges from the Dodge Street Facility on the environment and natural resources and to determine the manner in which to respond to

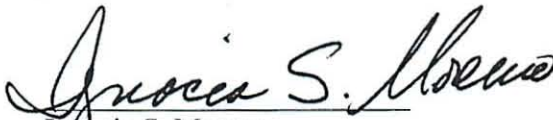


the impacts of these spills and discharges, including the reasonable costs incurred in restoration of terrestrial and aquatic resources held in trust by the State. Tex. Water Code § 26.265(d); and

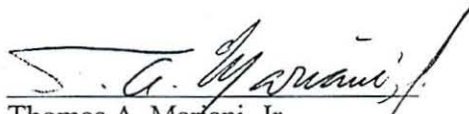
- c. Any other appropriate relief.

Respectfully submitted,

For United States of America

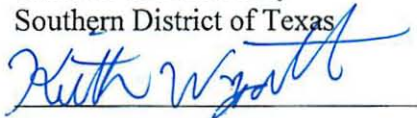


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